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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,192	10/29/2003	James Davis	081607-1222	6546
24504	7590	08/04/2004	EXAMINER	
THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP 100 GALLERIA PARKWAY, NW STE 1750 ATLANTA, GA 30339-5948			KOSOWSKI, ALEXANDER J	
			ART UNIT	PAPER NUMBER
			2125	

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/696,192	DAVIS ET AL.
	Examiner	Art Unit
	Alexander J Kosowski	2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 October 2003.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-64 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 33-64 is/are allowed.  
 6) Claim(s) 1,4-11 and 13-18 is/are rejected.  
 7) Claim(s) 2,3,12 and 19-32 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 29 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/9/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

- 1) Claims 1-64 are presented for examination. This application is a continuation of application number 09/929926, now Patent # 6671586.

### *Specification*

- 2) Page 1 of the specification, Paragraph 001, contains missing information regarding continuity of the current application. Specifically, the Patent # and Patent date need to be updated for the parent application.

### *Double Patenting*

#### *Statutory*

- 3) A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

- 4) Claim 18 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 39 of prior U.S. Patent No. 6,671,586. This is a double patenting rejection.

### *Claim Objections*

- 5) Claims 2-3, 12 and 19-32 are objected to as being dependent upon a rejected base claim, but may be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### *Allowable Subject Matter*

6) Claims 33-64 are allowed.

The following is an examiner's statement of reasons for allowance:

Referring to independent claims 33, 47, 54, 61 and 63, the closest pieces of prior art are Davis et al (U.S. Pat 5,576,7000) and Ehlers et al (U.S. Pat 5,696,695).

Referring to claim 33, neither Davis nor Ehlers, alone or in combination with each other or the prior art of record teaches a system for controlling demand in an energy delivery system comprising meter transceiver units coupled to a meter configured to detect demand, and a site controller transceiver configured to receive the RF signals corresponding to the metered demand from the plurality of meter transceiver units, such that the energy management controller determines a difference between the metered demand before communication of the demand reduction control signal and after the received RF signals, in combination with the remaining features or elements of the claimed invention.

Referring to claim 47, neither Davis nor Ehlers, alone or in combination with each other or the prior art of record teaches a site controller configured to receive the demand reduction control signal and configured to communicate a first radio frequency signal corresponding to the demand reduction signal, a second transceiver coupled to a meter, and wherein the site controller receives second and third RF signals and communicates them to an energy management controller, in combination with the remaining features or elements of the claimed invention.

Referring to claim 54, neither Davis nor Ehlers, alone or in combination with each other or the prior art of record teaches a site controller configured to receive the demand reduction control signal and configured to communicate a first radio frequency signal corresponding to the demand reduction signal, and a second transceiver coupled to a meter, the second transceiver

configured to determine a first demand detected by the meter before the RF demand reduction control signal is received, configured to determine a second demand detected by the meter after the appliance coupled to the appliance controller unit is shut off, configured to determine a change in demand corresponding to a difference in the first demand and the second demand, and configured to communicate a second RF signal corresponding to the determined change in demand to the site controller, in combination with the remaining features or elements of the claimed invention.

Referring to claim 61, neither Davis nor Ehlers, alone or in combination with each other or the prior art of record teaches metering a first metered demand at a plurality of meters, each one of the meters coupled to one of the appliances; transmitting a plurality of second RF signals each corresponding to one of the plurality of first metered demands to the energy management controller from a plurality of second transceivers, each one of the second transceivers coupled to one of the plurality of meters; shutting off the appliance coupled to the appliance control unit in response to receiving the first RF signal; metering a second metered demand at the plurality of meters; and transmitting a plurality of third RF signals each corresponding to one of the plurality of second metered demands to the energy management controller from the plurality of second transceivers, in combination with the remaining features or elements of the claimed invention.

Referring to claim 63, neither Davis nor Ehlers, alone or in combination with each other or the prior art of record teaches metering a first demand at a plurality of meters before the appliance is shut off, each one of the meters coupled to one of the appliances; metering a second demand at the plurality of meters after the appliance is shut off; determining a change in demand corresponding to a difference between the first metered demand and the second metered demand;

and transmitting a plurality of second RF signals to the energy management controller from a plurality of second transceivers, the second RF signals each corresponding to the respective determined change in demand, and wherein each one of the second transceivers is coupled to one of the plurality of meters, in combination with the remaining features or elements of the claimed invention.

***Claim Rejections - 35 USC § 103***

- 7) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 8) Claims 1, 4-8, 11 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al (U.S. Pat 5,576,700), further in view of Ehlers et al (U.S. Pat 5,696,695).

Referring to claim 1, Davis teaches a system which controls appliances comprising: at least one first transceiver identified by an identification code and configured to receive a radio frequency (RF) demand reduction control signal having the identification code (col. 9 lines 14-55 and col. 7 lines 1-3, whereby the appliance controller would inherently contain some form of memory and whereby the system may communicate via RF signals); at least one appliance controller unit, the appliance controller unit coupled to at least one appliance and the first transceiver (col. 3 lines 40-60); an appliance controller unit memory residing in the appliance controller unit, the appliance controller unit memory configured to have a unique identification code identifying the appliance controller unit such that when the RF demand reduction control signal identification code corresponds to the appliance controller unit unique identification code,

the appliance coupled to the appliance controller unit is shut off (col. 9 lines 14-40, whereby the controller would inherently contain some form of memory). However, Davis does not explicitly teach a second transceiver coupled to a meter, the meter coupled to the appliance, and the second transceiver configured to generate a second RF signal corresponding to an amount of demand detected by the meter; and a plurality of network transceivers configured to communicate the second RF signal to an energy management controller that initiated the RF demand reduction control signal.

Ehlers teaches a system for controlling appliances whereby a meter can transmit demand information via RF signals to an energy management controller (col. 4 lines 7-25).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to utilize a meter capable of detecting demand and transmitting the data to an energy management controller via a network of transceivers in the system taught by Davis since this would allow a utility company to access selected utilization data in order to control some of the customer's loads (Ehlers, col. 5 lines 48-53).

Referring to claim 4, Davis teaches that the transceiver is a radio frequency transceiver (col. 7 lines 1-3).

Referring to claims 5-7, Davis teaches an appliance controller coupled to the appliance and configured to generate a shut-off control signal in response to the RF demand reduction control signal so that the appliance is shut off (col. 3 lines 45-60).

Referring to claim 8, Davis teaches that each one of the plurality of appliance controllers is associated with a unique appliance controller identification code such that when an identification code portion of the RF demand reduction control signal corresponds to the unique

appliance controller identification code, the respective appliance controller generates the shut-off control signal (col. 9 lines 14-40).

Referring to claim 11, Davis teaches an interface coupled to the appliance controller unit memory and configured to receive at least the unique identification code identifying the appliance controller unit and further configured to transmit the unique identification code to the appliance controller unit memory for storage (col. 9 lines 14-40, whereby the controller would inherently contain some form of memory).

Referring to claims 13-17, Davis discloses that the communication network may be a public switched telephone network or a radio frequency or digital communication system (col. 12 lines 14-44). Davis also discloses that the communication network is not limited to these types of communication systems (col. 12 lines 37-44). A communication system could inherently also comprise a utility legacy system or an Internet network.

9) Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis and Ehlers as shown above, further in view of Kelly (U.S. Pat 4,190,800).

Referring to claim 9, Davis teaches the above. However, Davis does not explicitly teach a notification interface configured to generate a notification communication signal in response to a notification control signal received from the energy management controller, the generation of the notification control signal occurring before the RF demand reduction control signal is received by a predefined amount of time, such that the notification communication signal is communicated to a customer device such that a customer understands that the appliance will be

shut off at a future time, the future time substantially corresponding to the predefined amount of time.

Kelly teaches a system for controlling appliances whereby customers are informed of impending changes in demand and actions that may be taken to reduce electric load through appliance control unit before the actual demand change occurs (col. 4 lines 5-55 and figure 3).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to utilize notification signals for customers in the invention taught by Davis since this would allow customers to voluntarily turn off devices beforehand if they wish (Kelly, col. 4 lines 41-55) and since this would give warning to a customer so that he or she may be prepared for an electrical outage through individual controllers.

Referring to claim 10, in the rejection of claim 9 above, the customer is warned with a light signal as shown by Kelly in col. 4 lines 41-55. Therefore, referring to claim 10, see rejection of claim 9 above.

### *Conclusion*

10) The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bartone et al (U.S. Pat 6,633,823) – teaches a method for monitoring energy usage.

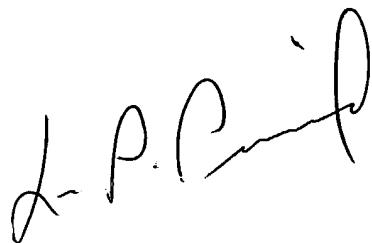
Nierlich et al (U.S. Pat 6,519,509) – teaches a system for controlling energy distribution.

11) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander J Kosowski whose telephone number is 703-305-3958. The examiner can normally be reached on Monday through Friday, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on 703-308-0538. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. In addition, the examiner's RightFAX number is 703-746-8370.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Alexander J. Kosowski  
Patent Examiner  
Art Unit 2125



LEO PICARD  
SUPERVISORY PATENT EXAMINER  
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